IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.5941 OF 2006

The President & Anr. .. Petitioners.

Vs.

Shri Vithal Krishna Sutar & Anr. .. Respondents

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S/Shri A.A.Garge with R.S.Apte for the petitioners.

Shri S.A.Rajeshirke for the respondents.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 22nd DECEMBER, 2006

P.C.

1. Heard. The petitioners challenge the judgment and order dated 22nd June, 2006 passed by the School Tribunal, Kolhapur, whereby the Appeal No.134 of 2000 filed by the respondents has been allowed and the petitioners have been directed to reinstate the respondent No.1 herein on the original post of assistant teacher with incidental benefits such as continuity of service, increments and difference in pay, etc.

2. The challenge to the impugned judgment and order is on the ground that the School Tribunal erred in giving undue weightage to the failure on the part of the respondent No.1 in following the procedure for tendering the resignation as prescribed under Section 7 read with Rule 40 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules of 1981 framed thereunder respectively, hereinafter called as "the said MEPS Act" and the said Rules". Reliance is sought to be placed in the matters of **Barshi Education Society, Barshi v. Ashok Ganesh Kulkarni & Ors.,** reported in 2004(3) Mh.L.J. 587 and **Balaleshwar Shikshan Mandal & Anr. v. Jaywant Bhaguji Gadekar & Ors.,** reported in 2003(4) ALL MR 108.

3. It cannot be disputed that the Tribunal has held that non-compliance of the procedure prescribed under Section 7 of the MEPS Act and the Rule 40 of the said Rules discloses that the respondent No.1 has not voluntarily tendered the resignation. However, it cannot be said that the finding to the effect that the resignation was not tendered voluntarily has been arrived at solely on the basis of non-compliance of the procedure in terms of the statutory provisions. The Tribunal has assessed the entire materials on

record and has held that the respondent No.1 had never tendered his resignation in relation to the post of assistant teacher, but the resignation which was tendered, was relating merely to the post of Incharge Head Master. The Tribunal has further held that the letter of resignation was undated but the same was submitted on 17th July, 2000. It has been further observed by the Tribunal that the respondent No.1, after expiry of the leave, joined his duties on 13th July, 2000. However, he was not in a sound state of mind on the said day. Again on 14th July, 2000 he was absent but the muster roll was signed by him. On 15th and 17th July, 2000, though the respondent No.1 was present, he had not signed the muster roll and under the letter dated 20th July, 2000 he had complained to the Education Department that since 15th July, 2000 he was not allowed to sign the muster roll and on 19th July, 2000 he was warned not to come to the school and was also assaulted. These findings are based on the assessment of the materials on record. Besides, the affidavit-in-reply filed by the respondent No.1 along with the copy of the resignation letter which was submitted by him apparently discloses that it related to the request for relieving him from the responsibilities of Incharge Headmaster. It does not disclose any resignation in relation to the post of

assistant teacher. In these circumstances, it cannot be said that the Tribunal has given undue importance to the procedural lapse in relation to the methodology of tendering resignation. The finding regarding non-compliance of the procedure regarding tendering of resignation by itself would not be a justification to interfere in the impugned order, and therefore, the findings which are based on the assessment of the evidence cannot be found fault with nor can be said to be contrary to the materials on record nor they disclose any perversity.

4. The decisions which are sought to be relied upon by the petitioners are of no help to the petitioners as they are totally in different facts and on different points. In both the cases, issue was whether the resignation can be said to be invalid merely because the same was not sent by registered post, even though in terms of Section 7 of the MEPS Act, it was prescribed that the same should be sent by registered post. The Courts in both the matters have held that merely because the resignation was not sent by registered post, that itself would not render the resignation letter to be invalid. That is not the point in issue in the case in hand. Therefore, the decisions are of no help to the petitioners.

5. Neither there is any jurisdictional error nor the impugned judgment requires interference in exercise of writ jurisdiction under Article 227 of the Constitution. The petition, therefore, fails and is hereby rejected.

(R.M.S.KHANDEPARKAR, J)